

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #11	CCRB Case #: 201808840	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 10/15/2018 6:51 PM	Location of Incident: [REDACTED]	Precinct: 120	18 Mo. SOL 4/15/2020	EO SOL 11/30/2020	
Date/Time CV Reported Tue, 10/16/2018 5:29 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/24/2018 11:27 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Scott Defalco	02597	953806	120 PCT
2. POM Andrew Pereiro	19041	959062	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Pereiro	Force: Police Officer Andrew Pereiro used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Scott Defalco	Force: Police Officer Scott Defalco used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Scott Defalco	Force: Police Officer Scott Defalco used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On October 16, 2018, Lieutenant Jeremy Pohl of the 120th Precinct called the IAB Command Center to report that § 87(2)(b) had complained of an officer's use of force against him. This complaint was subsequently received at the CCRB on October 24, 2018.

On October 15, 2018, at approximately 6:51 p.m., § 87(2)(b)'s mother called 911 to report that § 87(2)(b) had threatened to kill himself. PO Scott Defalco and PO Andrew Pereiro of the 120th Precinct and Emergency Medical Technicians (EMTs) arrived. The EMTs informed § 87(2)(b) that he would be transported to a hospital, and he agreed to be transported to the § 87(2)(b) in Staten Island. § 87(2)(b) engaged in a dispute with hospital staff. PO Pereiro conducted a forcible takedown against § 87(2)(b) (**Allegation A -Force: Physical force, § 87(2)(g)**) and pressed his knee into his neck (**Allegation B -Force: Chokehold, § 87(2)(g)**). PO Defalco punched § 87(2)(b) in the face two times (**Allegation C -Force: Physical force, § 87(2)(g)**). Hospital staff administered an injection to § 87(2)(b) who lost consciousness and did not interact with the officers further.

§ 87(2)(b) was not arrested or issued a summons as a result of this incident.

Video footage recovered in this case was recorded by both officers on their Body-Worn Cameras (BWCs) at the start of the incident. The footage recorded by the officers did not capture any of the FADO allegations or their surrounding circumstances due to the officers disengaging their BWCs prior to entering the hospital.

Findings and Recommendations

Allegation (A) Force: Police Officer Andrew Pereiro used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Scott Defalco used a chokehold against § 87(2)(b)

Allegation (C) Force: Police Officer Scott Defalco used physical force against § 87(2)(b)

§ 87(2)(b) stated to the CCRB (Board Review 01) that his mother called 911 to report that § 87(2)(b) posed a threat to himself. Officers and EMTs arrived, and because an EMT informed him that he would be transported to a hospital, he voluntarily entered an ambulance for transport to § 87(2)(b). Upon arrival, § 87(2)(b) refused to surrender his cell phone to a security guard. A security guard pushed and tripped § 87(2)(b) and as he did so, § 87(2)(b) pushed him away. § 87(2)(b) fell to the ground. Two hospital staff members held § 87(2)(b)'s arms to his sides, and PO Pereiro and a security held down § 87(2)(b)'s legs. § 87(2)(b) "wiggled" his torso back and forth in an attempt to break free from the grasp of these four and did nothing else with his body. PO Defalco pressed one of his knees on § 87(2)(b)'s chest for approximately ten seconds and then on the center of his throat for approximately five seconds, causing no restriction in his breathing. § 87(2)(b) repeatedly told those around him to "get off of" him, and he was told by all parties that this would be done if he "calmed down." § 87(2)(b) was administered an injection, became calm, and the officers left the location.

PO Pereiro stated to the CCRB (Board Review 02) that after entering § 87(2)(b) § 87(2)(b) engaged in a dispute with hospital security staff regarding the confiscation of his phone, growing "angrier and angrier" and issuing profane verbal threats. § 87(2)(b) the officers, and hospital staff members entered a room, where § 87(2)(b)'s "temper" grew "higher" and he acted "violently" and "irrationally" in that he attempted to "flip" a stretcher inside the room. § 87(2)(b) said that he would "attack" anyone who got near him and threatened to kill the officers and their families. PO Pereiro instructed § 87(2)(b) to "calm down," which he did not do.

§ 87(2)(b) moved within an arm's length of PO Pereiro. Due to § 87(2)(b)'s threats and his proximity to PO Pereiro, PO Pereiro grabbed hold of one of § 87(2)(b)'s arms. § 87(2)(b) yelled and "jerked" his arms into the air. PO Pereiro grabbed hold of both of his arms and, to gain § 87(2)(b)'s compliance and for no other reason, used his own body weight to take § 87(2)(b) to the ground. After this, § 87(2)(b) yelled, "wrestled" against the officers' grasp of his arms, "squirmed," "twisted," and "flailed." PO Pereiro did not see any part of PO Defalco's body contact § 87(2)(b)'s neck, and § 87(2)(b) did not complain of difficulty breathing. PO Pereiro did not see PO Defalco punch § 87(2)(b). Hospital staff injected something into § 87(2)(b) and his demeanor became "calm."

PO Defalco stated to the CCRB (Board Review 03) that when § 87(2)(b) arrived at the § 87(2)(b) psychiatric ward, he refused to relinquish his phone and headphones. He "went haywire," issuing verbal threats and making "furtive movements of insinuating violence" in that he clenched his fists and "lunged" his head forward in a "menacing" manner towards everyone present. § 87(2)(b) entered a room, where he attempted to throw a stretcher and machine used to record blood pressure. Hospital staff members determined that they would administer an injection to § 87(2)(b) to "calm him down," and the officers determined that they would handcuff him. A nurse administered the injection, and § 87(2)(b) threatened to strike her and other staff members.

The officers attempted to grab hold of and handcuff § 87(2)(b). He flailed his arms, and the officers took him to the ground. § 87(2)(b) tucked his arms towards his chest, pulled them away from his chest, flailed and swung them, and attempted to bite those around him. The officers instructed him to stop resisting and issued no further commands. PO Defalco, who was situated above § 87(2)(b)'s head, attempted to grab hold of his arms. As he did so, PO Defalco felt his own neck "pop." PO Pereiro, who was situated to one side of § 87(2)(b) at waist level, attempted to grab hold of his arms. PO Defalco struck § 87(2)(b) in the face two times with his hand. PO Defalco did not recall whether § 87(2)(b) responded to this. PO did not press his knee against § 87(2)(b)'s torso, and no part of his body made contact with § 87(2)(b)'s neck or throat. § 87(2)(b) did not complain of difficulty breathing. § 87(2)(b)'s level of resistance lowered, and the officers handcuffed him.

The Threat, Resistance, or Injury (TRI) Report that PO Pereiro prepared notes that he used a forcible takedown and no other force against § 87(2)(b) (Board Review 04). The TRI Report that PO Defalco prepared notes that he used hand strikes and no other force against § 87(2)(b) (Board Review 05). The AIDED Report that PO Pereiro prepared for himself notes that he sustained right shoulder and right wrist injuries while attempting to restrain § 87(2)(b) (Board Review 06). The report further notes that § 87(2)(b) spat into PO Pereiro's left eye. The AIDED Report that PO Pereiro prepared for PO Defalco notes that PO Defalco sustained neck, left shoulder, and left hand injuries while attempting to restrain § 87(2)(b) (Board Review 07).

§ 87(2)(b)'s medical records from § 87(2)(b) (Privileged Document 01) contain employee notations regarding § 87(2)(b)'s behavior leading to his sedation. These records indicate that at § 87(2)(b), § 87(2)(b) was ordered under mechanical four-point restraint for cessation of threatening behavior with a rationale of "patient threatening to punch staff, making threatening gestures. Restraint ordered for staff safety."

A medical records Restraint Note referenced § 87(2)(b) as "threatening to attack NYPD, threatening to attack Comprehensive CPEP team, threatening to punch staff members in the face if he isn't discharged, was making threatening gestures with closed fists. After being administered medication, § 87(2)(b) "threatened staff members, began punching the bed,

yelling, and made threatening gestures towards staff.” Further rationale for the restraint was noted as, “Patient made multiple statements threatening staff members, making multiple comments threatening to attack staff members, was making threatening gestures including approaching staff members with closed fists. When in the evaluation room, he began punching the stretcher, grabbing the stretcher and throwing it against the wall and then towards staff.

The “Triage Reason for Visit/Problem Situation” noted that “Emergency Medical Services (EMS) reports mother called 911 after patient reportedly (sic) threatened her. Patient arrived to CPEP agitated, refusing to allow security to take his belongings. Patient took his cell phone and shoved it down his pants between his legs. Patient was escorted to an interview room where he was offered medication. Patient continued to yell, threaten to hurt staff, refusing to give up the phone. Patient eventually agreed to take an injection with the encouragement of staff. After receiving injection, patient started to yell and became threatening again with staff.”

§ 87(2)(g)

An officer must use no more than the reasonable force necessary to gain control of a subject. NYPD Patrol Guide Procedure 221-01 (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 09).
- PO Pereiro has been a member of service for three years, and this is the first CCB complaint to which he has been a subject.
- PO Defalco has been a member of service for six and has been a subject in four CCRB complaints and seven allegation, none of which were substantiated.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On March 15, 2019, a Notice of Claim inquiry was sent to the New York City Comptroller’s Office, and the results will be added to the case file upon receipt (Board Review 10).

- § 87(2)(b) [Redacted]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date